COURT NO.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Income Tax Appeal No. 512 of 2001

1. The Commissioner of Income Tax, Dehradun.
2. Dy. Commissioner of Income Tax, Special Range(1), Dehradun

... Appellants

Versus

M/s Saipem, SPA C/o M/s Arther Anderson & Co.
66 Marker Towers, F. Curre Road,
Bombay-400005

... Respondent

Dated: December 07, 2005

Mr. S.K. Posti, Advocate for the appellants.
Ms. Krishi Shukla, learned counsel for respondent.

Coram: Hon. P.C. Verma, J.
Hon. J.C.S. Rawat, J.

This appeal is against the order dated 26.02.2001, passed by the Income Tax Appellate Tribunal, (Delhi Bench 'C' New Delhi) in TDS No.291(Del) of 1995. The dispute relates to the Assessment Year 1987-88.

2. The substantial questions of law raised in the appeal are as follows:

1. "Whether on the facts and in the circumstances of the case, the learned Income Tax Appellate Tribunal was not legally justified in holding that free accommodation facility provided by the employer on board the rig in high seas cannot be construed to be perquisite?"

2. "Whether on the facts and in the circumstances of the case, the learned Income tax Appellate Tribunal was not legally justified in holding that no perquisite arose on account of free accommodation facility provided by the employer to its employee and the Assessment Authority was not justified in charging interest under Section 201(1A) of the Income Tax Act?"

3. As this court has discussed in Income Tax Appeal No.57 of 2002, in the case of *Commissioner of Income Tax and another Vs. Sedco Forex International Drilling Co. Ltd.* decided on 9th October, 2003; the reasoning regarding these questions are given as under-

> *In this case, assessee had to work on the rig. It was hazardous, arduous and continuous. Under such circumstances, free accommodation, food and beverages is a necessity. It is not a luxury. It is not a perquisite. Therefore, the Department cannot levy interest on the employer under Section 201/201(1-A) of the Income-Tax Act.*

4. In view of the above discussion, the above questions of law are answered in the affirmative i.e. in favour of the assessee and against the Department.

5. The appeal is dismissed accordingly. No order as to costs.

(J.C.S. Rawat, J.) **(P.C. Verma, J.)**

Rajeev Dang